IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T & I J

NOTICE OF MOTION NO.118 OF 2006

IN

PETITION NO.561 OF 1994

IN

SUIT NO.67 OF 1994

...

Lekha Sugunan ...Plaintiff
(Petitioner)

v/s.

Mrs.Hansa A. Sridhar & Ors. ...Defendants
(Respondents)

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Mr.F. Devitre, Sr.counsel with Mr.J.P.Sen i/b Federal & Rashmikant for the Petitioner.

Mr.K.B. Nambiar for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 7TH DECEMBER,2006

P.C.:

1. The facts that are material for deciding this Notice of Motion are that the Petitioner has filed the petition for letters of administration in relation to the estate of the deceased husband of the Petitioner who died in the year 1994. One Arangil Sridhar had filed a caveat in the petition. Perusal of the affidavit filed in support of the caveat shows that according to the caveator the deceased husband of the Petitioner had left behind the Will dated 7th December, 1993 bequeathing certain properties to the caveator Sridhar. Sridhar had filed a petition for probate of that Will in this court. That petition was registered as Petition No.154 of 1995. By order dated 31st January, 1996 that petition was dismissed, because Sridhar has not able to produce the original of the Will that he was propounding. The Petition

was also not filed by the executrix. Therefore, really speaking on dismissal of the petition filed by Srirang for probate of the Will on the basis of which he was opposing this petition, the caveat should have come to an end. Subsequently, however, Srirang expired on 16-11-2004.

2. The Petitioner brought his legal representatives on record. This Notice of Motion has been taken out by the Petitioner for dismissal of the caveat. The legal representatives of the caveator have been served with the notice and affidavit of service to that effect has been filed. But they are not appearing and they have also not filed any reply.

3. It is clear from the material available on record that Srirang filed a caveat in this petition on the basis of the Will which has been alleged to have been left behind by the husband of the Petitioner bequeathing certain properties in his favour. But once the petition filed by Srirang for probate of that Will came to an end, interest of Srirang which was sufficient to maintain the caveat came to an end and therefore, he could not continue to maintain his caveat. In any case in the absence of any reply

filed by the legal representatives of the caveator who are brought on record, allegations made in the affidavit filed in support of the motion have to be taken at their face value. Notice of Motion is, therefore, granted in terms of prayer clause (a).

Office is directed to process the petition in accordance with law, as according to the Petitioner there is no other caveat filed in the petition.

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